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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Sam Brownback for Us Senate Committee
and Alan Groesbeck, as treasurer

MURs 4568, 4633, 4634 & 4736

BRIEF OF RESPONDENTS

Despite recommending a probable cause finding against the Respondents in the above captioned matters, the Office of General Counsel's Brief ("OGC Brief") fails:

- ☐ To present any evidence that the Brownback Committee could have known, or should have known, that the contributions (which were permissible on their face) were excessive;
- ☐ To present any evidence that any Brownback campaign official had any knowledge during the campaign of the allegedly impermissible activities described in the Brief;
- ☐ To present anything other than circumstantial evidence appropriate to a reason to believe finding but not a probable cause finding that the Brownback Committee "knowingly" accepted an impermissible contribution;
- ☐ To cure a fundamental and fatal contradiction in its own brief. On the one hand, the OGC weaves a conspiracy against the donors by relying on the "apparent secrecy" with which the contributions were made to raise "an inference that they [the contributors] had something to hide" and concluding that the donors "did not discuss their several contacts with, much less their PAC contributions made through, Triad with their daughter or their son-in-law (Sam Brownback)," Brief at 24-25. Yet, while citing secrecy by the donors in an attempt to prove one case, OGC argues contradictorily that the Brownback campaign "knowingly" took those very same contributions as excessive. The OGC Brief cannot have it both ways.

For these reasons and those set forth below, the Commission should find no probable cause to believe that the Committee violated the Act and Commission regulations and should dismiss these matters as applied to the Committee.

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Analysis: In reaching its recommendation, the Brief relies on three assertions that are contradicted by the actual record. First, the Brief states that the Committee “cooperated with Triad’s efforts ... and also participated in encouraging the Stauffers ... to work with Triad in making PAC contributions.” Brief at 26. This “cooperation” and “encouragement” consisted, according to the record cited by the OGC, of exactly one casual comment by advisor and later Campaign Manager Tim McGivern that John and Ruth Stauffer “might be interested in watching a promotional video from Triad.” Affidavit of Tim McGivern (“McGivern Aff.”), attached as Exhibit A. Mr. McGivern did not discuss Triad with either of the Stauffers apart from the video, he never recommended that they become clients of Triad, he never suggested that either Stauffer make contributions to any PACs, and he did not know the identity of any PACs that received contributions from the Stauffers until press reports appeared in late 1996.

There is no evidence cited by the OGC Brief, and none exists, of any other contact by McGivern or anyone else on the campaign about the Stauffers, or Triad suggesting to them, making PAC contributions. All the Brief can do is offer that the failure to discuss “their relationship seems unusual.” What is “unusual” is basing a probable cause finding on an admitted absence of any real evidence.

Second, the Brief concedes that the Committee “may not have been aware of the details of communications between the Stauffers and Triad ... in making PAC contributions.” Brief at 26-27. Indeed, the Brief concedes that the “Stauffers continued their silence even when they learned ... that all of the PACs to which they had contributed had subsequently given to the Brownback campaign.” Brief at 25.

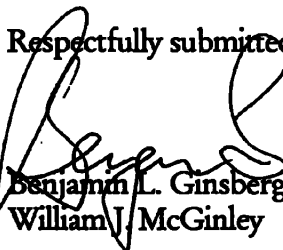
This concession (made in the context of trying to prove a case against the Stauffers) and the absence of any other evidence demonstrates that the Respondents here cannot be found to have “knowingly” received an excessive contribution.¹ In fact, the Stauffers testified that they never discussed Triad with anyone at the Brownback Committee including their daughter and son-in-law, Sen. Sam Brownback. John Stauffer Depo. Tr. at 48; Ruth Stauffer Depo. Tr. at 39, 87, 96 & 112-13.. The Stauffers also testified that they did not discuss Triad with anyone at the Brownback Committee. John Stauffer Depo. Tr. at 48; Ruth Stauffer Depo. Tr. at 39 & 112-13. Therefore, according to the evidence developed in the investigation of these matters and the OGC Brief itself, no one at the Brownback Committee had any knowledge whether the Stauffers made any contributions to PACs or which PACs received their contributions.

¹ Moreover, the Stauffers testified under oath that they did not have any knowledge that the PACs would contribute to the Committee and did not retain any control over the use of their PAC contributions. (See OGC Br. at 5 (“[T]he Stauffers appear to have never directly communicated with any of the nine PACs.”))

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Third, the OGC Brief at 27 cites the Stauffers work as volunteers in their son-in-law's campaign as evidence that they "had a particular knowledge regarding the campaign's fundraising needs." This argument is presented without support, and absolutely no substantive discussion of its relevancy, because there is none.

Conclusion: The contributions received by the Committee from the PACs were legal and proper on their face. As the OGC Brief admits, the Stauffers did not discuss their conversations with Triad or their PAC contributions with anyone at the Committee. The OGC Brief presents no evidence that anyone on the Brownback Committee had any knowledge about the contributions - much less whether they were impermissible. Therefore, there is no basis in law or fact to find probable cause to believe that the Committee violated the Act or Commission regulations. The Commission should find no probable cause to believe and dismiss these matters as applied to the Committee.

Respectfully submitted,

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William J. McGinley

Attachments